IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED: 13.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.6249, 6250, 6251, 6252 of 2012
and
M.P.Nos.2,2,2 and 2 of 2012

1.Grace College of Education,
represented by its Correspondent,
9/277, Anna Nagar,
Marappar Palayam,
Elavamalai (P.O)
Erode Taluk and District.
.. Petitioner in W.P.No.6249 of 2012

2.Grace Higher Secondary School (State Board),
represented by its Correspondent,
9/277-C, Anna Nagar,
Marappar Palayam,
Elavamalai (P.O),
Erode Taluk and District.
.. Petitioner in W.P.No.6250 of 2012

3.Grace Matriculation Higher Secondary School,
represented by its Correspondent,
9/277-A, Anna Nagar,
Marappar Palayam,
Elavamalai (P.O),
Erode Taluk and District.
.. Petitioner in W.P.No.6251 of 2012

4.Grace International School(CBSE),
represented by its Correspondent,
9/277-A, Anna Nagar,
Marappar Palayam,
Elavamalai (P.O),
Erode Taluk and District.
.. Petitioner in W.P.No.6252 of 2012

Vs.

1.The State of Tamil Nadu,
represented by its secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St.George, Secretariat,
Chennai- 600 009.

2.The Director of Rural Development and
Panchayat Raj,
Panagal Building,
Saidapet,
Chennai- 600 015.

3.The President,
Elavamalai Panchayat,
Elavamalai- 638 316.
Erode Taluk and District.

4.The Special Officer/ Block Development Officer
(Village Panchayat)
Elavamalai Panchayat,
Erode.

(R4 is suo motu impleaded vide Court
order dated 13.08.2019)

... Respondents in all Writ Petitions

PRAYER in W.P.No.6249 of 2012 : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records relating to the order in G.O.Ms.No.38, Rural Development and Panchayat Raj dated 5.3.2008 and published at Page No.1 of Extra Ordinary Issue of Part III, Sec.1(a) of the Tamil Nadu Government Gazette No.69, dated 5.3.2008 introducing amendment to Rule 15(c) of the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules, 1999 in so far as it relates to the petitioner institution and the demand notice bearing assessment number, 1759, dated 14.1.2011 issued by the third respondent herein and quash the same.

PRAYER in W.P.No.6250 of 2012 : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records relating to the order in G.O.Ms.No.38, Rural Development and Panchayat Raj dated 5.3.2008 and published at Page No.1 of Extra Ordinary Issue of Part III, Sec.1(a) of the Tamil Nadu Government Gazette No.69, dated 5.3.2008 introducing amendment to Rule 15(c) of the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules, 1999 in so far as it relates to the petitioner institution and the demand notice bearing assessment number, 1759-III, dated 14.1.2011 issued by the third respondent herein and quash the same.

PRAYER in W.P.No.6251 of 2012 : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records relating to the order in G.O.Ms.No.38, Rural Development and Panchayat Raj dated 5.3.2008 and published at Page No.1 of Extra Ordinary Issue of Part III, Sec.1(a) of the Tamil Nadu Government Gazette No.69, dated 5.3.2008 introducing amendment to Rule 15(c) of the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules, 1999 in so far as it relates to the petitioner institution and the demand notice bearing assessment number, 1759-I, dated 14.1.2011 issued by the third respondent herein and quash the same.

PRAYER in W.P.No.6252 of 2012 : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records relating to the order in G.O.Ms.No.38, Rural Development and Panchayat Raj dated 5.3.2008 and published at Page No.1 of Extra Ordinary Issue of Part III, Sec.1(a) of the Tamil Nadu Government Gazette No.69, dated 5.3.2008 introducing amendment to Rule 15(c) of the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules, 1999 in so far as it relates to the petitioner institution and the demand notice bearing assessment number, 1759-II, dated 14.1.2011 issued by the third respondent herein and quash the same.

For Petitioner : Mr.V.G.Suresh Kumar

For Respondents : Mr.A.Zakir Hussain
Senior Standing Counsel
(in all writ petitions)

ORDER

This writ petition has been filed to call for the records relating to the order in G.O.Ms.No.38, Rural Development and Panchayat Raj dated 5.3.2008 and published at Page No.1 of Extra Ordinary Issue of Part III, Sec.1(a) of the Tamil Nadu Government Gazette No.69, dated 5.3.2008 introducing amendment to Rule 15(c) of the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules, 1999 in so far as it relates to the petitioner institution and the demand notices bearing assessment number, 1759, 1759-I, 1759-II and 1759-III dated 14.1.2011 issued by the third respondent herein and quash the same.

2.It is relevant to extract the order made in W.P.Nos.6223 to 6225 of 2011 dated 23.11.2017 passed by this Court, as follows:

> "The petitioners, which are Educational Institutions, have filed these Writ Petitions, challenging the amendment to Rule 15 of Tamil Nadu Village Panchayats (Assessments and Collection of Taxes) Rules, 1999, and the consequential

demand notices.

2.The learned counsel appearing for the petitioners would submit that, identical Writ Petitions were heard by the learned Single Judge and they were dismissed, as against which, the Writ Appeals have been preferred before the Hon'ble Division Bench (in which, I was a party), and batch cases are pending. In the said batch case, interim order has been passed, wherein, a direction has been issued to the respective Educational Institutions to pay the property tax, with effect of 05.03.2008, the date when the amended Rule came into force. Since the cases on hand are also identical, the petitioners should essentially also be put on the said condition. For better appreciation, the order passed by the Hon'ble Division Bench in W.A.No.2152 of 2010, etc.(batch) dated 06.07.2011 is quoted herein below:-

> " " 2.For better appreciation, the order dated 17th June, 2011 is quoted herein below:-
>
> > " Reference may be made to the order dated 17th March, 2011 which reads as under:-
> >
> > We have heard Mr.A.K.Ganguli, learned senior counsel Mr.P.S.Raman, learned Advocate General and Mr.N.R.Chandran, learned Senior Counsel at length.
> >
> > 2.Mr.N.R.Chandran, learned senior counsel needs further hearing in all theh matters. As jointly agreed, put up all these cases on 13th June, 2011.
> >
> > 3.In the meantime, the appellants as also the Writ Petitioners shall pay property tax with effect from 05fth March, 2008, the date when the amended Rule came into force. Consequently, the interim order passed in the writ petitions stands modified. Needless to say that in the event the appellants or the writ petitioners succeed, the amount that may be deposited shall be adjusted."
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> 2.Before 17.03.2011, this batch of cases was listed on several dates. But the appellants and the writ petitioners took adjournment on one pretext or the other. On being questioned, the learned counsel appearing for the appellants and the writ petitioners submitted that the aforesaid order has not been complied with inasmuch as the property tax, as directed by this Court, has not been deposited.
>
> 3.Today, the learned counsel for the appellants prays for adjournment of the case on the ground of absence of the Senior Counsel.

4.Taking into consideration, the aforesaid facts, all these writ appeals and writ petitions stand dismissed. Consequently, the connected miscellaneous petitions are also dismissed. However, there will be no order as to costs."

3.Mr.A.K.Ganguli, the learned senior counsel appearing for the petitioners produced before us a list of 20 Institutions and submitted that out of the said 20 Institutions, 8 of them have deposited tax before 17th June, 2011 and 12 have deposited tax after 17th June, 2011. Accepting the correctness of the submission made by Mr.A.K.Ganguli that all the 20 Institutions named in the list have deposited the property tax in compliance of the order of this Court, these miscellaneous petitions are allowed and the order dated 17th June, 2011 passed in so far as the above mentioned writ appeal and writ petitions is recalled, and the writ appeal and writ petitions is recalled, and the writ appeal and writ petitions are restored to its original files.

4.It is made clear that if, on the next date of hearing of the matters, it is brought to our notice by the learned Advocate General that some of the Institutions mentioned in the list have not deposited the tax, then the order passed today shall stand recalled." "

3.The learned counsel appearing for the petitioners would further submit that, apart from claiming property tax, as per the amended Rule, surcharge is also being levied.

4.In fact, this Court had an occasion to consider a similar plea in the case of Kaavery Educational Trust, rep. by the Correspondent, Salem Vs.The Govt. of Tamil Nadu and another in W.P.Nos.8160, 3036 etc, of 2016(batch) and the Writ Petitions were disposed of by order, dated 20.06.2016. The operative portion of the said order is as follows:-

"5. The respondents have furnished a tabulated statement, from which, it is seen that they have calculated surcharge at 60% of the property tax, which had been done relying upon Table 2 in Schedule 1 of the Act. The issue would be as to whether at this juncture, the respondents-Panchayats would be entitled to demand surcharge. Section 172 of the Act deals with the levy of house tax and the procedure for levying house tax. So far as the levy of surcharge is concerned, the only provision which refers to the same is Section 168 which speaks of local cess surcharge. The said provision has been omitted by virtue of Tamil Nadu Panchayats (Amendment Act, 2009 - with effect from 06.08.2009). The learned counsel appearing for the respondents have not referred to any other statutory provision by which surcharge is leviable at flat rate, as in the instant case, 60% of the property tax has been levied as surcharge. Surcharge has been defined under various taxation statutes, as a penal levy and the penal levy is on account of non-payment of taxes or on account of belated payment of taxes. This Court, prima facie is of the view that by referring to the Explanation in Schedule 1 of the Act, the respondents are not justified in demanding surcharge at flat rate of 60%. However, this issue is left open to be decided later on, since the larger issue as to whether the petitioners-institutions are entitled for exemption from property tax, is pending consideration before the Division Bench of this Court. That apart, certain Institutions have also approached the Hon'ble Supreme Court as against the dismissal of their cases and the Hon'ble Supreme Court in Special Leave Petition No.20031 of 2012, which had been filed against the order in Writ Appeal against the judgment dated 20.10.2010 in W.A.No.505 of 2007, has granted leave.

6.In the light of the above, the petitioners-institutions shall continue to pay the property tax in terms of the interim order granted by the Division Bench of this Court in W.A.No.2152 of 2010, etc. batch, dated 17.03.2011 and also pay the library cess which is levied at 1% of the property tax upto date. So far as the surcharge is concerned, it appears that the petitioners have effected part-payments. Therefore, whatever payments which have been made towards surcharge, need not be refunded at this juncture, nor it is required to be adjusted as of now. The respondent-Panchayats shall not levy any surcharge and they shall await the decision of the Hon'ble Division Bench of this Court or the Hon'ble Supreme Court whichever is earlier, where the larger issue as to whether the petitioner-institutions are entitled for the benefit of exemption, is pending consideration.

7.The learned Counsel for the petitioners submitted that the petitioner-institutions have been regularly remitting the property tax and for instance, with regard to Kaaveri Educational Trust (petitioner in W.P.No.8160 of 2016), they have paid property tax from the assessment year 2013-2014, and the property tax has been abruptly increased from Rs.4,64,325/- to Rs.13,74,305/-.

8.In the light of the above, the petitioner-institutions are at liberty to challenge the increase of property tax by availing remedies available under the provisions of the Act and this can be done by the petitioners without prejudice to the rights in the pending Writ Petitions as well as Appeals, wherein the larger issue with regard to levy of property tax is put to challenge. In the light of the above, the respondents are directed to issue a revised demand giving break-up details. The above direction shall be complied with by the respondent-panchayats, within a period of four weeks from the date of receipt of a copy of this order. It is needless to say that the petitioners should be granted reasonable time to comply with the revised demand of property tax. With the above direction, these Writ Petitions stand disposed of. There is no order as to costs. Consequently, connected miscellaneous petitions are closed".

5. In the light of the above, the petitioners are directed to pay the property tax with effect from 05.03.2008, and continue to remit the same till the Writ Petitions are heard and disposed of. With regard to surcharge passed, the same shall be paid pursuant to the demand, which shall be raised by the third respondent in terms of the direction issued in Kaavery Education Trust (supra).

3.At this juncture, the learned counsel for the petitioner submitted that pursuant to the interim order of this Court dated 13.03.2012 made in the present writ petition, they have paid the entire property tax till date. The said statement is recorded.

4.Recording the said statement of the learned counsel for the petitioner, this writ petition is closed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CJ Conf)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
State of Tamil Nadu,
Rural Development and Panchayat Raj Department,
Fort St.George, Secretariat,
Chennai- 600 009.

2.The Director of Rural Development and
Panchayat Raj, Panagal Building,
Saidapet, Chennai- 600 015.

3.The President,
Elavamalai Panchayat,
Elavamalai- 638 316.
Erode Taluk and District.

4.The Special Officer/ Block Development Officer
(Village Panchayat)
Elavamalai Panchayat, Erode.

+1cc to Mr.V.G.Suresh Kumar, Advocate, S.R.No. 69093

+1cc to Mr.V.G.Suresh Kumar, Advocate, S.R.No. 69094(17/12/2019)
+1cc to Mr.V.G.Suresh Kumar, Advocate, S.R.No. 69095(17/12/2019)
+1cc to Mr.V.G.Suresh Kumar, Advocate, S.R.No. 69096(17/12/2019)

W.P.No.6249 of 2012 to 6252 of 2012
and
M.P.No. 2 of 2012

SPD(CO)
GN(12/12/2019)